

Thursday, 14 February 2019 (1000)
Navy Marine Corps Court of Criminal Appeals Courtroom
1254 Charles Morris St SE, Bldg. 58, Suite 320
Washington Navy Yard, 20374

***United States v. King*, NMCCA No. 201800016**

Before Panel 3 of the Court: **Senior Judge Fulton**
Judge Crisfield
Judge Hitesman

For Appellant: **Mr. Matthew Flynn, Esq.**

For Appellee: **Capt Lucas Huisenga, USMC**

A panel of officer and enlisted members sitting as a general court-martial convicted appellant, a Master-At-Arms Seaman (E-3), contrary to his pleas, of one specification of sexual assault in violation of Article 120, UCMJ. The members sentenced him to confinement for eight years, reduction to the pay grade of E-1, total forfeiture of pay and allowances, and a dishonorable discharge. The CA ordered the sentence executed, except for the dishonorable discharge.

The issue to be argued before the court is as follows:

- I. *Does Article 120(b)(1)(B) of the UCMJ fail to provide adequate standards by which an ordinary person can intelligently choose, in advance, whether a sexual encounter would be lawful, rendering it unconstitutionally vague?***
- II. *Were the findings instructions plainly erroneous because lack of consent was not included as an element of the offence of sexual assault by bodily harm, and because the instructions would have permitted a conviction without the prosecution proving lack of consent beyond a reasonable doubt?***